

PATENT
Application Serial No. 10/016,551
Docket No. 01-8007RCE1

REMARKS

This amendment is responsive to the final Office Action¹ mail-dated June 17, 2005.

Claims 1-7 and 9-49 were presented for examination and were rejected. Claims 1, 19, 20, 37, 42 and 48 are independent claims. Claims 1, 13, 14, 19, 20, 31, 32, 37, 42 and 48 are amended. No new matter is added. Claims 12 and 30 are canceled without prejudice or disclaimer. Claim 8 was previously canceled. Claims 1-7, 9-11, 13-19, 21-29, and 31-49 are pending.

In the Office Action, the Examiner rejected claims 1-7, 9-11, 16-29 and 34-36 under 35 U.S.C. § 103(a) as being unpatentable over Fortman et al. (U.S. Patent No. 5,987,100) in view of Rodriguez et al. (U.S. Patent Publication No. 2002/0067806) further in view of Kobylevsky et al. (U.S. Patent No. 6,493,427); rejected claims 12, 13, 30, and 31 under 35 U.S.C. § 103(a) as being unpatentable over Fortman et al. in view of Rodriguez et al. and further in view of McAllister et al. (U.S. Patent No. 6,442,242); rejected claims 14, 15, 32, and 33 under 35 U.S.C. § 103(a) as being unpatentable over Fortman et al. in view of Rodriguez et al. and further in view of Tullis et al. (U.S. Patent No. 5,802,314); rejected claims 37-40, 48, and 49 under 35 U.S.C. § 103(a) as being unpatentable over Fortman et al. in view of Tullis et al.; rejected claim 41 under 35 U.S.C. § 103(a) as being unpatentable over Fortman et al. in view of Tullis et al. and further in view of Rodriguez et al.; and, rejected claims 42-47 under 35 U.S.C. § 103(a) as being unpatentable over Fortman et al. in view of Rodriguez et al.

¹ The Office Action may contain a number of statements characterizing the cited references and/or the claims which Applicants may not expressly identify herein. Regardless of whether or not any such statement is identified herein, Applicants do not automatically subscribe to, or acquiesce in, any such statement. Further, silence with regard to rejection of a dependent claim, when such claim depends, directly or indirectly, from an independent claim which Applicants deem allowable for reasons provided herein, is not acquiescence to such rejection of that dependent claim, but is recognition by Applicants that such previously lodged rejection is moot based on remarks and/or amendments presented herein relative to that independent claim.

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Applicants respectfully traverse these rejections. On page 12 of the final Office Action it states "Regarding claims 12 and 30, Fortman in view of Rodriguez fails to teach 'translating one or more message attachments into attachment text'." The final Office Action then alleges "McAllister teaches converting voice message into attachment text." Without acquiescing in this allegation, Applicants submit that any rejection based on McAllister is overcome for at least the following reasons.

McAllister Not Usable as Prior Art Under 35 U.S.C. § 103(c)

Claims 12, 13, 30 and 31 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fortman et al. in view of Rodriguez et al. and further in view of McAllister et al. As Applicants have pointed out in several responses, McAllister et al. cannot be used as prior art against this application under 35 U.S.C. § 103. Effective November 29, 1999, subject matter that was prior art under 35 U.S.C. § 103 via 35 U.S.C. § 102(e) is disqualified as prior art against the claimed invention if that subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person [35 U.S.C. § 103(c)]. The subject matter of the McAllister et al. patent and the claimed invention of the present application were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person, namely Verizon. Therefore, the McAllister et al. patent cannot be used as prior art against this application under 35 U.S.C. § 103.

Applicants previously noted this deficiency in the Examiner's rejection(s) on the record in the Amendment filed July 11, 2003, again in the Request for Reconsideration filed December 23,

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2003, and yet again in the response filed on June 15, 2004. The Examiner has maintained this rejection without addressing Applicants' arguments. Because the McAllister et al. patent is not prior art against this application, any rejection based on the McAllister et al. patent must be withdrawn. See MPEP §§ 706.02(1)(1), 706.02(1)(2)(11). The rejections of claim 12, claim 13 which depends from claim 12, claim 30 and claim 31 which depends from claim 30 are thus overcome and these claims are thus allowable.

Applicant has amended independent claims 1, 19, 20, 37 and 48 to include the limitations of claims 12 or 30 and canceled claims 12 and 30. These limitations are included in these claims as follows:

Claim 1 recites, interalia: "translating the message from a source format to message text, wherein the translating includes translating one or more message attachments into attachment text."

Claim 19 recites, interalia: "means for translating the message from a source format to message text, wherein the translating includes translating one or more message attachments into attachment text."

Claim 20 recites, interalia: "translate one or more message attachments into attachment text when converting the message."

Claim 37 recites, interalia: "instructions for translating the one or more message attachments into attachment text when the one or more message attachments are convertible into the target format."

Claim 48 recites, interalia: "translating the one or more attachments into attachment text when the one or more attachments can be converted to the target format."

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Each of these recitations brings into its respective independent claim, a limitation of claim 12 or 30, the rejection of which was based on alleged teachings thereof in McAllister et al. Therefore, because McAllister et al. is *not prior art*, each of the above-noted independent claims has been made allowable since each currently-amended claim's recited combination is not disclosed or suggested by its remaining respectively-cited prior art.

Claims 2-7, 9-11 and 13-18 are dependent from claim 1 and are allowable at least for reasons based on their dependency, directly or indirectly, from an allowable base claim.

Claims 21-29 and 31-36 are dependent from claim 20 and are allowable at least for reasons based on their dependency, directly or indirectly, from an allowable base claim.

Claims 38-41 are dependent from claim 37 and are allowable at least for reasons based on their dependency, directly or indirectly, from an allowable base claim.

Claim 49 is dependent from claim 48 and is allowable at least for reasons based on its dependency, directly or indirectly, from an allowable base claim.

In view of the above, and for those reasons alone, it is submitted that the 35 U.S.C. § 103(a) rejection of claims 1-7, 9-11, 13-29, 31-41 and 48-49 should be withdrawn and the claims allowed.

In addition, Applicants maintain their position with respect to the inapplicability of the Kobylevsky et al. reference notwithstanding the argument offered on page 2 in the Advisory Action of October 5, 2005, according to which the Rule 116 amendment filed on August 17, 2005 was not entered. Applicants' position with respect to Kobylevsky et al. is as follows.

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Claims 1-7, 9-11, 16-29 and 34-36 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fortman et al. in view of Rodriguez et al. further in view of newly-cited Kobylevsky et al. Applicants traverse this rejection. In accordance with MPEP 2143, to establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in Applicants' disclosure. And, all three of these basic criteria must be met - if any one is not met the prima facie case of obviousness is not made. A prima facie case of obviousness is not made in this instance for the following reasons.

Consider, for example, claim 1:

A method for delivering a message to a receiving party, comprising: receiving a message intended for the receiving party; determining whether the message should be delivered to the receiving party; translating the message from a source format to message text; converting the message text to an audible message when the message should be delivered to the receiving party; determining a date or time at which the audible message should be delivered; initiating a telephony call to the receiving party at the determined date or time; and delivering the audible message to the receiving party during the telephony call. (Emphasis added.)

Clearly, claim 1 calls for delivering a message to a receiving party. In claim 1, the received message is translated and converted into an audible message, and it is the resulting audible message (directly related to and derived from the received message) which is delivered to the receiving party.

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In the final Office Action, page 6, bottom, the Examiner admits that Fortman et al. in view of Rodriguez et al. does not teach “determining a date or time at which the audible message should be delivered” and Applicants agree. The Examiner then alleges that: “Kobylevsky teaches determining a date or time at which the reminder [i.e., audible message] should be delivered (col. 9, lines 11-30, col. 20, lines 1-4, 20-27)” (emphasis added) which may be true, but is otherwise irrelevant. Indeed, Applicants respectfully disagree that the “reminder” in Kobylevsky et al. supports the Examiner’s position because the “reminder” is essentially a return call back to the calling party customer. The reminder can’t suggest the “audible message” recited in Applicants’ claims because the claimed audible message is headed in the direction of the receiving party, not back to the calling party.

Kobylevsky et al. relates to a remote prescription refill system for a pharmacy - the pharmacy is the receiving party and the customer is the calling party who calls-in requests for prescription-refills. In Col. 9, lines 11-30, and col. 20, lines 1-4 and 20-27 of Kobylevsky et al., the section cited by the Examiner, the discussion may be about the time of day when calls are placed, but this discussion does not impact Applicants’ claims because those calls in Kobylevsky et al. are being placed BY the pharmacy (receiving party) TO the customer (calling party) at a particular or pre-determined time of day. This call placement direction is opposite to that recited in Applicants’ claims.

Prima Facie Case of Obviousness - First Criteria:

Considering the first criteria of a *prima facie* case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference

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teachings. There is no such suggestion here. In Fortman et al., all received messages (from a calling party or parties) are stored and the subscriber (receiving party) is notified of the stored messages; when the subscriber requests a stored message, it is sent to the subscriber. (Abstract) All activity is directed to getting a message to the subscriber, the receiving party. Similarly, in Rodriguez, a user/subscriber (receiving party) is notified of urgent phone messages by repeatedly dialing the subscriber's phone to notify the user of the urgent message and when the user is contacted the urgent message is played for the user. (Abstract) Again, all activity is directed to getting a message to the subscriber/user, the receiving party. Against this backdrop, how can any reference which shows calls directed from a called or receiving party BACK to a calling party be suggestive of anything relevant to Applicants' claims? The answer is it cannot.

First of all, there is no suggestion or motivation to be found in Kobylevsky et al., which shows return-calls at particular times of day to pharmacy-customers advising them about the status of their called-in prescriptions, to modify Kobylevsky et al. to send "prescription-filled messages" at particular times of the day TO THE PHARMACIST, the receiving party. Clearly, the pharmacist who filled the prescriptions has no need for these reminders. Indeed, the pharmacy wants the calls to go the other way, back to the customer. Therefore, even when Kobylevsky et al. is viewed in the context of Fortman et al. or Rodriguez et al., there would be no suggestion or motivation to be found in Kobylevsky et al. to reverse its operation and send return calls to the Fortman et al. or Rodriguez et al. receiving parties. Thus, no suggestion or motivation exists in Kobylevsky et al. for such a modification.

Secondly, there is no suggestion or motivation to be found in either Fortman et al. or Rodriguez et al., each showing incoming calls being forwarded only in the direction to a

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receiving party, to modify Kobylevsky et al., which returns time-scheduled calls back to a calling party, in a manner to prevent those return calls from being returned and, instead, forward them to the receiving party.

Additionally, there is no motivation to be derived from the references themselves, to combine Kobylevsky et al. with the other two references, as their purposes are different, where their calls are placed in opposite directions. The suggestion or motivation to combine the references must be derived from the references themselves, and cannot be conjured-up to meet the language of the claims after a reading of the claims, which appears to be the case in this instance. Indeed, there is no suggestion in any of these references to combine Kobylevsky et al. with the Fortman et al. - Rodriguez et al. combination for the purpose of adding a time/date calling feature to that combination to send their calls to their receiving parties at a particular time/date because the Kobylevsky et al. time/date feature is only with respect to calls being returned to its calling party, rather than being sent to its receiving party. Applicants submit, therefore, that the first criteria has not been met and a *prima facie* case of obviousness has not been established on this basis alone.

Prima Facie Case of Obviousness - Second Criteria:

Applicants further submit that the most that a combination of these three references can show is (1) the forwarding of an incoming phone call to a receiving party after being stored, or after the urgency of the incoming call is communicated to the receiving party, in combination with (2) the returning of an incoming phone call back to a calling party at a particular time of day. This fails to meet the second criteria of providing a reasonable expectation of success with respect to the subject matter of Applicants' claims because the combination of references does

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not, and cannot, successfully operate to provide a phone call to a receiving party at a particular time as called-for by the claims. Without any suggestion in either the Fortman et al. - Rodriguez et al. combination on the one hand, or in the Kobylevsky et al. reference on the other hand, to modify Kobylevsky et al. in a manner to send its reminder at a particular time/date to a receiving party instead of a sending party, then any combination of all three references cannot result in an embodiment that operates in accordance with Applicants' claim 1. Therefore, not only is there no reasonable expectation of success, there simply is not any expectation of success. Applicants submit, therefore, that the second criteria has not been met and a *prima facie* case of obviousness has not been established on this basis alone.

Prima Facie Case of Obviousness - Third Criteria:

Also, this combination of references does not disclose all claim limitations. It does not disclose or suggest the claimed receiving party receiving, at a pre-determined time of day, a message from a sending party. The Examiner states that Kobylevsky et al. teaches determining a date or time when the "audible message" should be delivered. But this cannot possibly be true because Applicants' recited "audible message" is translated and converted (derived) from Applicants' recited "message" where the recited "message" is delivered TO the receiving party, not from the receiving party (see claim 1). Since Kobylevsky et al. teaches the opposite - time-scheduled reminder calls are placed BY the receiving party - its combination with the other references does not disclose or suggest Applicants' claimed subject matter. Therefore, at least: "determining a date or time at which the audible message should be delivered" as recited in claim 1 is not disclosed by (a) Fortman et al. or Rodriguez et al. as the Examiner admits because the date or time is not disclosed, nor by (b) Kobylevsky et al. at least because the reminder message

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in Kobylevsky et al. cannot be the claimed audible message, nor, therefore, by (c) the combination of the three references. The advisory action states "Examiner relied upon Kobylevsky et al. only for the teaching of a date or time at which the audible message should be delivered." Applicants acknowledge the limited reliance placed on this reference, but this teaching is insufficient in view of the lack of suggestion or motivation to be found in the references themselves to modify or combine these references, for reasons stated above. Applicants submit, therefore, that the third criteria has not been met and a *prima facie* case of obviousness has not been established on this basis alone.

Therefore, a *prima facie* case of obviousness has not been made with respect to claim 1. Not only does the combination of references fail to meet one of the criteria of a *prima facie* case, they fail to meet all three criteria.

This same (failure to make a *prima facie* case) argument applies to claims 2-7, 9-11 and 16-18, all of which depend from claim 1 and all of which are also rejected over Kobylevsky et al. It is therefore respectfully requested that the rejection of all of these claims be withdrawn and the claims allowed.

Claims 13-15, dependent from claim 1 are likewise allowable, at least by reason of their dependency from allowable base claim 1.

Independent claim 19 recites: "A system for presenting a message to a receiving party comprising: means for obtaining a user profile corresponding to the receiving party, the user profile comprising delivery data that specifies a time or date of message delivery." (Emphasis added.) Again, this message delivery is to the receiving party wherefore Kobylevsky et al. is ineffective as a reference to teach or suggest this claim limitation, for reasons given above. It is

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therefore respectfully requested that this rejection of this claim be withdrawn and the claim allowed.

Independent claim 20 recites, *interalia*, “a message receiver configured to: initiate a telephony call to the receiving party at a time specified by the receiving party.” (Emphasis added.) Claim 20 is not disclosed by Fortman et al. or Rodriguez et al. as the Examiner admits on pages 5 and 6 of the final Office Action, and is also not disclosed or suggested by the reverse functioning in Kobylevsky et al. for reasons given above. This same argument applies to claims 21-29 and 34-36, all of which depend from claim 20 and all of which are also rejected over the combination of Fortman et al., Rodriguez et al., and Kobylevsky et al. It is therefore respectfully requested that the rejection of all of these claims be withdrawn and the claims allowed.

Claims 31-33, dependent from claim 20 are likewise allowable, at least by reason of their dependency from allowable base claim 20.

Next, claims 37-40, 48, and 49 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fortman et al. in view of Tullis et al.. Claim 37 has been amended to include a limitation similar to that discussed above with respect to claims 1, 19 and 20. Claim 37 recites, *interalia*, “instructions for initiating a voice call to the receiving party at a pre-determined date and time identified by the receiving party.” (Emphasis added.) Support for this amendment can be found in the specification (*see*, at least, pgs. 9, ¶36; pg. 14, ¶54 and pg. 17, ¶64). The final Office Action, pg. 15-16, admits that Fortman et al. fails to teach at least four elements of claim 37 and alleges that Tullis et al. cures the deficiency in Fortman et al. in each instance. Applicant does not acquiesce in that rejection, at least for reasons earlier presented in the record. In any event, Kobylevsky et al. and not Tullis et al. is cited to teach “determining a date or time at which

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the reminder [i.e., audible message] should be delivered" (final Office Action, pg. 6). In view of the argument presented above in connection with claim 1, Kobylevsky et al. is ineffective to disclose or suggest "instructions for initiating a voice call to the receiving party at a pre-determined date and time identified by the receiving party" as recited in claim 37. Thus, the combination of Kobylevsky et al. with the other references does not disclose or suggest claim 37. It is therefore respectfully submitted that the rejection of claim 37 be withdrawn and the claim allowed.

Claims 38-41 depend from claim 37 and are also allowable, at least for reasons based on their respective dependencies from allowable base claim 37.

Claim 48 has been amended to include a limitation similar to that discussed above with respect to claim 37. Claim 48 recites, *interalia*, "initiating a telephony call to a telephony device associated with the receiving party at a pre-determined date and time." (Emphasis added.) Support for this amendment can likewise be found in the specification (*see* pg. 9, ¶36; pg. 14, ¶54 and pg. 17, ¶64). For reasons given above with respect to claim 37, the rejection of claim 48 should be withdrawn and the claim allowed.

Claim 49 is dependent from claim 48 and is also allowable at least because of its dependency from allowable claim 48.

Lastly, claims 42-47 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Fortman et al. in view of Rodriguez et al. In the final Office Action, page 3, it is alleged that Fortman et al. "identifies at least one message criterion that indicates when messages should be delivered to the subscriber" (emphasis added) and cites col. 5, lines 10-15 and 42-49 as well as col. 7, lines 17-18 and 49-64. These sections of Fortman et al. do not disclose one message

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criterion that indicates when messages should be delivered to the subscriber and these sections have been previously refuted by Applicants on the record, as discussed below.

As previously explained, column 5, lines 10-15, of Fortman et al., cited by the Examiner, corresponds to Table 1 in Fortman et al. In Table 1, Fortman et al. discloses different types of notifications that may be used to notify a subscriber of a pending message. Fortman et al. does not disclose or suggest at least one message criterion that indicates when messages should be delivered to the user, as required by claim 42.

At column 5, lines 42-49, Fortman et al. discloses:

Subscriber mailbox 3300 preferably also stores a database of subscriber profile data. The subscriber profile data includes subscriber-defined information regarding the subscriber's notification preferences. The subscriber profile data might include any of the notification types shown in Table 1, including notifying the subscriber using a message waiting light or tone, or by sending part or all of the message to the subscriber as the notification.

Nowhere in this section, or elsewhere, does Fortman et al. disclose or suggest at least one message criterion that indicates when messages should be delivered to the user, as required by claim 42.

At column 7, lines 16-19, Fortman et al. discloses that the "subscriber notification may include a message waiting light or tone on the subscriber's telephone, or the message itself delivered to the subscriber's ADSI telephone, pager, fax, or computer (Table 1)." Nowhere in this section, or elsewhere, does Fortman et al. disclose or suggest at least one message criterion that indicates when messages should be delivered to the user, as required by claim 42.

At column 7, lines 49-64, Fortman et al. discloses:

For example, if the subscriber uses ADSI telephone 2130 to retrieve the pending message, the subscriber must specify whether the pending message should be downloaded in voice or ADSI text form.

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Interface 3100 then routes the request to service provider 3200. Based on the detected type of subscriber telecommunications equipment and any subscriber specified retrieval format, service provider 3200 determines the subscriber's retrieval format [step 8300]. Service provider 3200 reads the pending message from subscriber mailbox 3300 and determines whether the message is already in the retrieval format [step 8400]. The message would already be in the retrieval format if the retrieval format is the same as the caller format or the subscriber's normal retrieval format. If the message is already in the retrieval format, then service provider 3200 sends the message to the subscriber [step 8500].

Nowhere in this section, or elsewhere, does Fortman et al. disclose or suggest at least one message criterion that indicates when messages should be delivered to the user, as required by claim 42.

The Examiner, to Applicants' puzzlement, was apparently not persuaded by this clearly persuasive argument. Therefore, to the extent that the Examiner may be interpreting (i.e., misinterpreting) these sections in such a manner that a subscriber allegedly is indicating when a message should be delivered, by the subscriber's very act of indicating a notification preference, (although these sections do not disclose or suggest that a message is delivered at the time of the preference indication), then the current amendment to claim 42 overcomes that interpretation.

A subscriber notification preference in Fortman et al. (Table 1) necessarily occurs AFTER a signal has been sent to the receiving party alerting the receiving party of the existence of a message. By contrast, claim 42 recites, *interalia*, "prior to monitoring messages, interacting with a user to generate a user profile that identifies at least one message criterion that indicates when the messages should be delivered to the user." (Emphasis added.) This amendment is supported in the application as filed, at least in the specification pages 13-16 and Figs. 6-7. Claim 42 has thus been amended to more specifically recite that the user profile is generated before monitoring for messages. It is therefore impossible for Applicants' user in

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claim 42 to generate a user profile indicating preferences while, or after, receiving messages or any possible notice of those message because Applicants' message monitoring activity had not yet begun. Applicants' user profile, in claim 42, is generated during the set up phase which clearly occurs before the monitoring phase. By contrast, Fortman et al. cannot indicate a preference for message delivery until after existence of the message is communicated to the subscriber (user). Therefore, even if Fortman et al. can somehow be construed to suggest when messages should be delivered to the user, (a notion with which Applicants disagree) it certainly does not disclose or suggest such delivery prior to monitoring for those messages as Applicants are claiming.

Accordingly, any rejection of claim 42 based on the notion that Fortman et al. discloses or suggests that the subscriber indicates when a message should be delivered should be withdrawn. Moreover, the Kobylevsky et al. reference does not cure this deficiency in Fortman et al. because it discloses the reverse operation - it discloses when a message should be delivered from a user (i.e., from the called party pharmacy making calls to the calling party customers to pick up their prescriptions). Clearly, this reverse functionality teaches away from Applicants' claim 42 wherefore Kobylevsky et al. in combination with the other applied references do not disclose or suggest claim 42. It is, therefore, respectfully submitted that the rejection of claim 42 be withdrawn and the claim allowed.

Claims 43-47 are dependent from claim 42 and are also allowable, at least for reasons based on their respective dependencies from allowable base claim 42.

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CONCLUSION


In view of the foregoing amendments and remarks, Applicants respectfully request the reconsideration of this application and the allowance of the pending claims.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 07-2347 and please credit any excess fees to such deposit account.

Respectfully submitted,
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